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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,199	11/04/2003	Dennis A. Durbin	37955XF	5039

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EXAMINER
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KIM, AHSHIK

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/701,199

**Applicant(s)**

DURBIN, DENNIS A.

**Examiner**

Ahshik Kim

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/04/03 (Initial filing of application).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Obviousness-Type Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-21 and 23-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of US Patent 5,414,251 to Durbin (hereinafter "'251 patent").

Although the conflicting claims are not identical in word by word manner, it is the Examiner's view that they are not patentably distinct from each other. In claim 1 of the instant application, the Applicant claims an optical reader comprising a housing, a photosensor array, an optical system, a memory system and a display system. In claim 1 of '251 patent recites "1. An apparatus for reading two-dimensional optical information, comprising: a) a housing having an opening; b) a photosensitive array mounted within said housing; b) optical string means associated with said array and said opening of said housing for focusing optical information on said array; (c) array and optical string control means for controlling said array and optical string; (d) memory means for storing output from said array; (d) pattern recognition means for assisting

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a user in recognizing and confirming the decodability of optical information; (e) display means associated with said housing for displaying an image of said array output, as processed by said pattern recognition means, said display means further including optical information decodability indication means; f) user feedback means, providing user interface with said apparatus, for  
5 facilitating user control over said optical string means, array, and display means; g) decoding means for decoding optical information; and (h) electrical power supply means for providing power for the operation of said apparatus.”

The user feedback is disclosed in claims 3, 19 and 28 of the instant application, which was disclosed in claim 1 of ‘251 patent.

10 Raster functionality is disclosed in claims 14 and 30 of instant application and in claim 4 of ‘251 patent.

Pattern recognition means and neural network is disclosed in 21 of instant application and in claim 20 of ‘251 patent.

Thus, with respect to above discussions, they are an identical invention. If they are  
15 different, they are not patentably distinct.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

20 A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-7, 9-13, 15-21, 23-29, and 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang et al. (US 5,513,264, hereinafter "Wang").

Re claims 1, 2, 5, 6, 10-13, 15, 18, 23-26, 29, 31, and 34, Wang discloses an one-dimensional /two-dimensional barcode reader (see abstract; col. 4, lines 12-23) comprising a hand-held housing (see figures 3a and 3b; col. 5, lines 8+), a photo sensor array in the form of CCD (col. 5, lines 10+); an optical system the form of CCD (col. 5, lines 10+); an optical system (col. 1, lines 11+); a memory system for storing the captured image (col. 6, lines 2+) and a display system 16 (col. 4, lines 23+) which displays the actual code being scanned.

Re claims 3, 19, and 28, as disclosed in the abstract, the dataform can be edited or modified, which can be considered as a feedback.

Re claim 9, 17, and 33, the reader allows users to focus on area or field of depth (col. 4, line 67 – col. 5, line 3).

Re claims 4, 20, and 27, the reader itself contains function of pattern recognition (since some codes are not decoded even if they are aimed and captured).

Re claim 21, the "neural" is defined as "1: of, relating to, or affecting a nerve or the nervous system 2: situated in the region of or on the same side of the body as the brain and spinal cord:" (Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> edition). The encoding system includes various I/O devices and a computer. Analogously interpreted, the barcode reader contains a processor which is connected to subcomponents such as image capturing and processing, decoding, A/D converting, etc. In view of the above, pattern recognition system is part of the network within the device.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

5 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10 6. Claims 8, 16, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. (US 5,513,264, hereinafter "Wang") in view of Sant' Anselmo et al. (US 5,331,176, hereinafter "Sant' Anselmo"). The teachings of Wang have been discussed above.

Wang fails to specifically teach or fairly suggest that the reader apparatus is further comprised of a zoom system.

15 Sant' Anselmo teaches a raster optical scanner (see abstract; col. 4, lines 23-34) comprising a zoom system (col. 4, lines 55+).

In view of Sant' Anselmo's teaching, it would have been obvious to an ordinary skill in the art at the time the invention was made to further incorporate a well-known zoom system to the teachings of Wang to in order to enlarge the target and therefore improve image capturing and decoding. Use of zooming system in an optical device such as camera and scanner is well within one ordinary skill in the art. Use of zoom to improve overall readability of the barcode is an obvious expedient one ordinary skill in the art would contemplate.

20 7. Claims 14, 22, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. (US 5,513,264, hereinafter "Wang") in view of Dvorkis et al. (US 5,373,148, hereinafter "Dvorkis"). The teachings of Wang have been discussed above.

Wang fails to specifically teach or fairly suggest that the reader apparatus is further comprised of a rastering device. Wang also does not disclose that the reader has a means to reduce jittering when in use.

Dvorkis teaches a raster optical scanner (see col. 3, lines 21-40) further comprising a  
5 means to eliminates jittering of the devices (col. 12, lines 13-24).

It is the Examiners' view that raster scanning method, and jitter reducing means as discloses in Dvorkis are well known improvements found in optical readers. Therefore, such modifications would have been an obvious extension as taught by Dvorkis for improving overall functionalities of the scanner and therefore an obvious expedient.

10

### ***Conclusion***

I. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Wang (US 5,659,167) discloses an optical scanner. Applicant is respectfully  
15 suggested to carefully review the cited reference.

II. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Ahshik Kim* whose telephone number is (571)272-2393. The examiner can normally be reached between the hours of 6:00AM to 3:00PM Monday thru Friday.

20 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (571)272-2398. The fax number directly to the Examiner is (571)273-2393. The fax phone number for this Group is (703)872-9306.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be  
25 addressed to [ahshik.kim@uspto.gov].

*All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and  
30 Trademark on February 25, 1997 at 1195 OG 89.*

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

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Ahshik Kim  
Patent Examiner  
Art Unit 2876  
September 2, 2004

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